Supreme Court, U.S.
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Case No. 99-_____

IN THE SUPREME COURT OF THE UNITED STATES

NANCY S. KRIDEL,

Petitioner, Pro Se

vs.

FL PUBLIC EMPLOYEES RELATIONS COMMISSION;
DEPARTMENT OF MANAGEMENT SERVICES,

Respondents

On Petition for a Writ of Certiorari to the
U.S. Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

Nancy S. Kridel
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(no telephone number at this time)

QUESTIONS PRESENTED FOR REVIEW

Questions raised, regarding the proceedings of the FL Public Employees Relations Commission (PERC) during two appeals I brought before that Commission are:

1. Whether my First Amendment rights to freedom of speech, freedom of religion and the right to petition government for the redress of grievances were denied by the FL Public Employees Relations Commission (PERC) and by my employing agency, the Department of Management Services (DMS), in the manner in which PERC conducted its proceedings;
2. Whether my Career Service rights as an employee of the State of Florida, and therefore my rights under the Constitution of the United States (Article I, Section 10, regarding Obligation of Contracts; Article VI, paragraph 2; Amendment 14, Section 1), were violated by DMS and the PERC hearing officers and Commissioners' interpretation of my position description and performance standards without conforming to the Fla. Administrative Code Rules for Career Service employees (Fla. Admin. Code R. 60K-8; also all other applicable 60K rules);
3. Whether my rights under the Constitution of the United States (Amendment 19) were denied by PERC in refusing, without prior notice, consideration of my appeal of DMS's refusal to consider grievances I filed during employment (including harassment issues and refusal of DMS to review a grievance committee decision or give me accurate, official personnel documents for my position); in refusing to consider any prior agency actions which were related to my position description and performance standards; in neglecting to give me prior notification that prior agency actions would not be considered and canceling my request for a prehearing conference.
4. Whether PERC violated my right to have witnesses appear in my behalf, whom I was required to subpoena to testify for me to verify my employment record;
5. Whether my employing agency (DMS) violated my federal and state Constitutional and Career Service rights as an employee.

6. Whether the Florida First District Court of Appeal, therefore, deprived me of my First Amendment and other Constitutional rights by affirming PERC's final orders of PERC regarding suspension and dismissal actions taken against me by DMS, without any consideration or review of prior disciplinary actions and grievances I filed. I had never, in my entire life, filed a grievance before1994, and I was advised to file them, or a charge of discrimination, by the Florida Commission on Human Relations counselor as early as 1992. I didn't until 1994, because I didn't want to have to take such measures; I don't know why I've been subjected to any of this.
6. Whether the federal district court magistrate prejudiced himself in conducting the proceedings and writing an opinion in both this case and my civil action against the Department of Management Services, when I did not consent to a magistrate being assigned to my civil rights case.
7. Whether Title 28 U.S.C. § 2403(a) may apply with reference to DMS and other State agency supervisors' evaluation of my employment experience and with reference to the State of Florida's and Dept. of Labor's definition of clerical employment as "run-of-the mine" and not professional. (Before that revision of the code, the work of those employees/positions was defined as menial.)

> "Pursuant to the Supreme Court of the United States Rule 29.4(b), notice is given that the constitutionality of an Act of Congress is drawn into question in the related civil action against the Department of Management Services; that neither the United States, the United States government, nor any federal employee is a party to this case, and therefore, Title 28 U.S.C. § 2403(a) may apply."

PARTIES TO THE PROCEEDINGS

Appeals to FL Public Employees Relations Commission (PERC)--

Nancy S. Kridel v. Dept. of Management Services, PERC #CS-96-128

Cohee, Lee, PERC Hearing Officer
Horne, Chairman; Anthony and Gooding, Commissioners
Horne, Cindy, Attorney for Dept. of Mgmt. Services (DMS)
Kridel, Nancy, Appellant Pro Se

Nancy S. Kridel v. Dept. of Management Services, PERC #CS-96-254

Cheatham, Jerry, PERC Hearing Officer
Mahan, Chairman; Anthony and Gooding, Commissioners
Horne, Cindy, Attorney for Dept. of Mgmt. Services (DMS)
Kridel, Nancy, Appellant Pro Se

Appeals to FL First District Court of Appeal--

Nancy S. Kridel v. Dept. of Management Services, Case No. 96-03509, reported at 694 So.2d. 750

Edward Barfield, Chief Judge; Kahn and Davis, Judges
Horne, Cindy, Attorney for DMS
Kridel, Nancy, Appellant Pro Se
Rix, Joey D., Attorney for PERC, withdrew entry of appearance

Nancy S. Kridel v. Dept. of Management Services, Case No. 96-04568, reported at 695 So.2d. 703

Horne, Cindy, Attorney for Dept. of Management Services
Kridel, Nancy, Appellant Pro Se
Rix, Joey D., Attorney for PERC

U.S. District Court--Nancy S. Kridel, Pro Se, v. FL Public Employees Relations Commission, Case No. 498cv17-WS

Sherrill, William C., Jr., U.S. Magistrate Judge
Stafford, William, U.S. District Court Judge

11th U.S. Circuit Court of Appeals--Nancy S. Kridel, Pro Se, v. FL Public Employees Relations Commission, Case No. 98-2598

Tjoflat, Hall and Marcus, Circuit Judges
Rix, Joey D., Attorney for PERC

The parties in the related proceedings in the federal courts:

U.S. District Court--Nancy S. Kridel, Pro Se, v. Department of Management Services, Case No. 497cv198-RH

Hinkle, Robert, U.S. District Court Judge
Sherrill, William C., Jr., U.S. Magistrate Judge
Garrity, James, FL Attorney General's Office, counsel for the defendant

11th U.S. Circuit Court of Appeals--Nancy S. Kridel, Pro Se, v. Department of Management Services, Case No. 99-10612-F

McCoy, Charlie, FL Attorney General's Office, counsel for the appellee

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This Petition for Writ of Certiorari has been prepared citing to the Record and Supplemental Records (SR1, SR2) in Nancy S. Kridel v. FL Public Employees Relations Commission, 11th U.S.C.A Case No. 98-2598. The following citations also include the Appellant Brief and Petition for Rehearing en Banc, Appendix B.

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5. U.S. Constitution, Amendment 19

(The following citations to Appendix B are from the Petition for Rehearing *en Banc*, Kridel v. FPER, 11th U.S.C.A. Case No. 98-2598.)

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All Constitutional and statutory provisions involved, including Fla. Admin. Code Rules, that are cited in this Petition may be found by locating the specific law or rule in the Table of Contents to Joint Appendix and its page number in the joint appendix.

PETITION FOR A WRIT OF CERTIORARI

Nancy Schmidt Kridel respectfully petitions for a Writ of Certiorari to review the opinions and judgment of the Florida First District Court of Appeal in two cases appealed from a state government tribunal, the FL Public Employees Relations Commission (PERC), regarding suspension and dismissal actions taken against me by my employer, the Dept. of Management Services (DMS). Both PERC and DMS are agencies of the State government of Florida. Petitioner requests review of the subsequent proceedings at the U.S. District Court and U.S. Circuit Court of Appeals, because the same U.S. District Court magistrate wrote the report and recommendations adopted in both civil actions I filed and has proceeded against me in the Title VII case as if I had no basis for my claims against PERC.

OPINIONS BELOW

The opinions in both of the U.S. District Court and Circuit Court of Appeals are unpublished. The opinions of the state court are reported at Kridel v. Dept. of Management Services, 694 So.2d 750 and Kridel v. Dept. of Management Services, 695 So.2d. 703.

JURISDICTION

The U.S. Eleventh Circuit Court of Appeals judgment issued on April 15, 1999, and a timely petition for rehearing was denied on June 24, 1999. The Court's jurisdiction rests on 28 U.S.C. § 1253, 1254(1), 1257(a) and The Constitution of the United States, Art. III, Section 2.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitution of the United States

Article I, Section 10
Article VI, paragraph 2
Amendment 1
Amendment 7
Amendment 14, Section 1
Amendment 19

Public Law 103-317, Title VI, August 26, 1994, 108 Statute 1774

§ 610(a)(1), (3), (4), (5), (6), (11)

U.S. Code of Federal Regulations and Fed. R. Civ. P.

Title 5, U.S.C. § 706(2) and § 556(e)
Title XXIX, U.S.C. § 623(a)(2); (d)
29 CFR Ch. XIV [7-1-98 Edition] §1604.11(a), (d) and (e)
Title XLII, U.S.C., Ch. 21 § 2000e(j) and § 2000e-3(a)
Fed. R. Civ. P. 60(a) and (b)

U.S. District Court for the Northern District of Florida

Local Rule 7.2

Constitution of the State of Florida

Sections 2, 4 and 23

Florida Statutes (1995)

§ 110.227(5)(a)
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Dept. of Management Services Pamphlet on Sexual Harassment—

"An Issue of Respect"-- which has statutory authority in 20.05 (1)(b), (5), 110.201(2) and 120.53(1) Fla. Stat. (1995)

STATEMENT OF THE CASE

Proceedings at the FL Public Employees Relations Commission

I brought to PERC, on March 12, 1996, together with my appeal of suspension, 127 pages of documentation in support of my statements on the appeal. I appealed suspension for insubordination and neglect of duty, and I appealed the DMS refusal to review a 1995 grievance committee decision. I wrote in prehearing statements that DMS had refused to hear a 1994 sexual harassment grievance. I didn't have legal counsel to represent me; I had no experience in litigation of any kind. PERC scheduled a prehearing conference for me, at my request; the hearing officer cancelled that conference, without rescheduling it (Joint Appendix E 15-16), on April 1, 1996. A public hearing was held April 11, 1996. PERC quashed, at the hearing, all of the witnesses I'd subpoenaed to verify the accuracy and quality of my work and to verify the existing office procedures and Career Service rules. I did raise objections to all PERC actions, but I was given no consideration by the hearing officer. I filed specific proposed findings of fact and closing

argument. PERC issued a recommended order May 10, which I received on May 12, 1996 (my employer had already terminated my employment on May 9). I filed specific exceptions on May 13, in compliance with Fla. Admin. Code R. 38D-15.002(2); PERC denied every post-filing I attempted, and a final order issued on July 29, 1996. I filed a Motion for Reconsideration (amended on August 8, 1996), in compliance with Fla. Admin. Code. R. 38D-15.005(2), identifying points of fact and law that were overlooked or misapprehended by PERC. PERC said I was only attempting to reargue the merits; my motion was denied on August 14, 1996. (Joint Appendix A-3509-1 thru 22; A-4568-1 thru 27)

My position was terminated by DMS alleging insubordination and unlawful use of office equipment. My appeal of dismissal was entered at PERC the same day--May 9, 1996. PERC held a hearing on June 10, 1996. I asked that my proposed findings of fact and closing argument in the appeal of suspension be considered, also, in the appeal of dismissal. I filed copy of transcript of the hearing. PERC issued a recommended order on July 8, 1996, and a final order on September 17, 1996, without reading the transcript of the hearing. I filed specific exceptions to the recommended order on July 16, 1996, amended October 2, 1996, to include transcript references. The exceptions were filed with a motion for reconsideration (amended November 24, 1996, to correct a clerical error). I also filed, on October 2, motions to enter evidence of my prior work record, a list of errors in the transcript, and a list of my objections during the hearing. PERC denied reconsideration on November 15, 1996; they denied December 6, 1996, two motions (dated November 26) to amend the record and to reopen the record to enter evidence, because the case was before the State court.

Proceedings at the FL First District Court of Appeal

Appeal of the suspension was entered on September 18, 1996, and an opinion was issued April 21, 1997. I requested rehearing on April 24; the court denied rehearing on May 14, 1997. A mandate issued on June 2, 1997. PERC withdrew from its initial entry of appearance. (Writ A-20, 21, 22) Appeal of the dismissal

was entered on November 27, 1996. PERC made entry of appearance. The court opinion issued on April 30, 1997. My motion for rehearing or clarification on May 2 was denied May 27, 1997. A mandate issued on June 12, 1997. (Writ A-23, 24, 25)

I brought both appeals on the basis of rule challenge, malicious prosecution (or trespass) and irregularities in the proceedings. The cases only contain the name of DMS as defendant/appellee, because the PERC proceedings were still in progress. I was compelled to proceed *in forma pauperis.* I requested assistance from more than a dozen legal offices or legal aid sources; I was unable to obtain any legal counsel. No hearing or trial was held. Every motion I made to enter evidence, except my motion to enter a DMS motion to quash my witnesses in the appeal of suspension, which was given to me during the hearing without prior notice. (Joint Appendix E-1 thru 6) The court denied every motion I made for rehearing or clarification. Every document that was not before PERC during its proceedings was barred. The court issued no written explanation of its opinions of the cases. (Joint Appendix A-3509-23 thru 27; A-4568-30 thru 36)

The court denied return of almost all documents I filed in both Cases; I wasn't given prior notice of a time limitation for retrieving documents before they would be destroyed. I wasn't given a docket index to the record of each of the cases. (I compiled a chronological listing of docket entries for the U.S. District Court.) The court never advised me of right to, or time limit to appeal to any court.

Initial Proceedings in the U.S. District Court (Writ A-8 thru 19)

While still unemployed and without unemployment compensation, I went to the Clerk of the State court (who was an attorney) and requested assistance about a right-to-sue letter received from the EEOC. I was given no instructions by the Clerk as to where my cases should be appealed. I was given no recommendation of other attorneys who might help. As plaintiff, therefore, I filed at the U.S. District Court, on May 14, 1997, a Complaint under Title VII of the Civil Rights Act of 1964, as amended, and attached a

copy of the motions for reconsideration pending at the State court. I received a copy of the federal court's Local Rules; N.D. Fla. Local Rule 7.2 allows for removal of a case from a State court, but I did not know how, or have sufficient time, to proceed or obtain legal assistance.[1] I was told to wait for the court to reply, and the State court issued denial of the motions for reconsideration within the following weeks. I had no knowledge of federal court rules.

My original complaint named both DMS and PERC as defendants, and was docketed in the Tallahassee Division as Nancy S. Kridel v. Department of Management Services and FL Public Employees Relations Commission, U.S. Dist. Ct. 497cv198-MP. I was told the district judge was in Gainesville, FL, I should call Gainesville to make any inquiry about the case, and I should wait, after filing any document, for the judge to reply; also, anything I wished to communicate had to be in writing. (I filed all documents in Tallahassee.)

I filed, on May 14, 1997, motion to proceed *in forma pauperis*, but I was able to obtain temporary employment, June 4, 1997. I paid my filing fee on August 4, 1997; I also brought to the court a complete set of relevant documents (from state court and PERC proceedings) to support my complaint, including the voluminous Record of the PERC dismissal proceedings.)

The court did not reply until August 19, 1997. My request for appointment of counsel on October 28, saying I was able to pay reasonable attorney fee, was denied on November 19, 1997. I was twice ordered (November 17 and December 10, 1997) to remove PERC as defendant and all allegations that applied to PERC. (Joint Appendix B-1 thru 7) The court ordered me to pick up the documents I had filed in evidence and not to file them again unless ordered, so I didn't attempt to file any documents in this case.

I didn't receive copy of the November 17 order until after the 30-day time limit I would have been allowed to appeal the State court decision in another state court (if I'd known I should only

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[1] The section of 28 U.S.C. in that Local Rule speaks only of a defendant removing a civil action.

have done that). It was, however, within the 365 days (from the last action in PERC proceedings) allowed to file a discrimination complaint in the Federal Court. I faxed a request to the EEOC on December 5, 1997, and the EEOC issued Charge 151980355 on December 18, 1997. I filed a second lawsuit on January 14, 1998--a Civil Action Related to Complaint Under Title VII of the Civil Rights Act of 1964 (Case No. 497cv198-MP); it was docketed as Nancy S. Kridel v. FL Public Employees Relations Commission, U.S. Dist. Ct. 498cv17-WS. I named PERC as defendant to try to protect my rights in the other case, because the federal court said the State court decision was in favor of DMS (R1-2). I believe there are disputes of fact in the PERC recommended orders and conclusions of law, as well as violations of my Constitutional rights, by PERC, during its proceedings.[2]

The EEOC issued a right-to-sue letter naming PERC as respondent on February 8, 1998; I brought the letter to the court February 18, 1998. I hadn't received the Report and Recommendation, filed February 17, 1998. I didn't know, prior to receipt of the report, that the same magistrate judge was assigned to proceedings in this case. I still thought that a district judge was preparing, or writing, the content of those documents.

The right-to-sue letter (R1-5-4 thru 7) states that I acknowledge PERC was not my employer, i.e., I did not work in that agency. However, DMS is, also, only the agency in which I worked; the State of Florida is my actual employer. Both PERC and DMS are agencies of the State government. My employee paychecks have STATE OF FLORIDA printed on them, not the Department of Management Services. All State agencies operate under the same

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[2] The EEOC prepared Charge No. 151970031 for me in September 1996, regarding the suspension and dismissal actions, but it names only DMS as respondent, because the PERC proceedings were still in progress, and I was given right to appeal their actions to the State court. The State court cases were docketed only with DMS named as defendant, because that is the way the cases were styled at PERC, but the State court docketing statements specifically appeal the actions of PERC. (R1-6-4)

Statutes and Florida Administrative Code Rules regarding career-service employees. PERC acts as a lower tribunal in providing administrative hearings regarding the State's employment litigation actions--by any of its several agencies--against its career-service employees; I obtained permanent career-service status in 1991, and I had that status in 1996 at the time of suspension and dismissal.

The Report (Writ A-11 thru 18) said that the Rooker-Feldman doctrine barred the district court from reviewing, reversing, or invalidating final state-court judgments; PERC wasn't my employer--therefore, not a properly named defendant, and a highest state court judgment could only be appealed to the Supreme Court. It said I was only asking for review of State court decisions, which had upheld PERC's orders.

My motion for rehearing, February 19, 1998, said the State of Florida has established statutes and administrative code rules regarding the employer/employee relationship, and neither PERC nor DMS adhered to them; I said I was a Career Service employee with specific rights under those rules in appealing to PERC and my rights have been denied throughout PERC's proceedings. (R1-6)

My motion for rehearing was denied and the magistrate's report accepted on March 12; the case was dismissed with prejudice on March 13, 1998. (Writ A-8, 9) I requested reopening of the case March 26, attaching a copy of an Amended Motion for Judgment Upon Default, dated March 20, 1998, which I'd filed in the case against DMS. I asked that the case against PERC be kept open until the other case was decided. I said I believed that my First Amendment rights have been repeatedly denied throughout the PERC proceedings. (R1-9) The district judge denied my motion, accepted the magistrate's report and dismissed the case, with prejudice, for lack of subject-matter jurisdiction, on April 2, 1998. (Writ A-19)

No hearing or trial in the district court in either case. The complaint was never served on PERC; I'd been told, in the related case, not to enter any lower court documents as evidence except during a trial, or if I was ordered to do so, or if the defendant filed summary judgment motion, so I did not attempt to file other documents in

this case. I never received--I was never asked to sign--a consent form to have a magistrate handle proceedings in this civil action.

It was not until June 1998, that I realized the same magistrate was handling all proceedings in both civil actions filed at the district court. Every time I called the court, in the related case, I was told to call Gainesville; the magistrate was in Tallahassee, FL. In July 1998 District Judge Hinkle (in Tallahassee) was assigned to that case. He hasn't seen the undocketed responsive memorandum I filed March 26, 1998, because I was ordered, by the magistrate, to pick it up in March; when I tried to enter it as a correction to the docket, September 23, 1998; and when I tried to enter it again as evidence, November 5, 1998, for the district judge's review of objections I'd filed to the magistrate's actions.

Decision in the U.S. Circuit Court of Appeals (Writ A-1 thru 7)

I filed an appeal, April 25, 1998, trying to protect my rights in the related case that was still pending in the district court. (That case no longer contains any claims against PERC.) I believe I have valid factual and legal grounds upon which to obtain a judgment in support of both of my cases. My appeal, docketed as Nancy S. Kridel v. FL Public Employees Relations Commission, Case No. 98-2598, was filed with a copy of two documents pending at that time in the related case--an Amended Motion for Judgment on Default, dated March 20, and copy of the Responsive Memorandum, dated March 26, 1998, that was never docketed. (I didn't learn that until June 19/20, 1998.)

On April 15, 1999, the district court decision (that it lacked subject matter jurisdiction; I could only appeal to the U.S. Supreme Court) was affirmed, saying I'd had reasonable opportunity to raise my federal claims in the State court. My June 24 motion for stay of order of dismissal was denied July 23, as a motion for stay of mandate (which doesn't apply to my case). I filed a motion for rehearing, and the clerk sent back a letter in August saying no action would be taken on it, because the case was already closed. On October 4, an order (Writ A-7) issued that the motion was denied, AND the court sent back to me an entire set of the records of this

case (and some from the other) that I had filed August 23, 1999, in the related case against DMS; I think they were sent back to me in error; the judges in the related case denied my August 23 motion without having received all of the documents I filed. I don't know why a judge in this case against PERC received the set of records. They were exhibits of doc. 112, filed in the case against DMS, that I was told by the magistrate to pick up, without being placed in the record or considered by the district judge. The August 23 motion was filed to correct the docket of that case and admit them as evidence. It has been expensive to call the court, copy and mail documents to the court, and I'm unemployed.

I didn't have reasonable time to litigate any federal claims in the State courts or at PERC. I wasn't even aware that such litigation was necessary. I didn't attempt such litigation, because the EEOC told me they were going to investigate my Charge and the federal actions were entirely separate. (The EEOC told me they wanted nothing to do with any of the State court and PERC proceedings.) The EEOC didn't assign an investigator until January 1997, more than six months after my employment was terminated and almost two years after I filed the original complaint of discrimination in Tallahassee. The EEOC held no hearing. I have only been able to call and leave messages at the EEOC. I did bring a copy of the August 25, 1995, EEOC Charge 151952190 to PERC as attachment to my appeal of the suspension action on March 12, 1996. I also brought to PERC two other EEOC Charges against DMS when they were issued, which was before my appeal of dismissal was denied by PERC. The EEOC issued the right-to-sue letter naming PERC as respondent February 8, 1998; page 7 of this petition discusses that document.

The appellate court has pending, at this time, the related case docketed as Nancy S. Kridel v. Dept. of Management Services, Case No. 99-10612-F, appealed on April 7, 1999. The same judge issued a report and recommendation in both cases. (On September 9, 1998, I filed a Notice to the U.S. District Court stating I believed legal or constructive fraud existed, due to magistrate's intervention

in both cases and docketing of my case in both Tallahassee and Gainesville courts. I filed an Unsworn Declaration of Bias or Prejudice in the U.S. District Court on October 7, 1998, against the magistrate, who has proceeded against me in the case as if my case against PERC is closed and I have no basis for any claims against PERC or the State court decision.) The magistrate wrote the report and recommendation November 6, 1998, in the case to impose a sanction against me for filing default judgment motion when DMS didn't reply to my responsive memorandum to a motion to dismiss. DMS didn't reply at the closing of time allowed by the magistrate's scheduling order during a discovery period; the district judge overruled all objections I've made to magistrate's intervention. I filed, in March 1999 (doc. 112) the appellate court records in my case against PERC, when I was ordered to show cause why my case should not be dismissed for failure to pay a sanction. The magistrate ordered me to pick them up without consideration by the court. Doc. 112 includes four grievances filed during my employment, which weren't heard by DMS and were refused consideration by PERC. The magistrate's report (March 11, 1999) denied consideration of those documents and my objections to the order to show cause. The district judge accepted the report, dismissing the case on March 29, 1999.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

The Constitution of the United States protects my rights in this case, as a citizen of the United States and prevents any state from depriving me of my constitutional rights (Art. VI and Amendment 14, Section 1). It makes me equal with all men before the law; accords me free, lawful speech; confirms my religious freedom and liberty of conscience, and it permits me to petition the government for redress of grievances (Amendment 1). It ensures my right of trial by jury (Amendment 7). It protects me from discrimination on the basis of sex (Amendment 19). It guarantees that the legal obligation of contracts shall not be impaired (Art. I, Section 10). It defends my rights against the government itself (Art. VI, ¶2). My rights have been denied by the federal appellate court (October 4,

1999); by the U.S. District Court; by the Florida First District Court of Appeal; by PERC, and by DMS.

1. U.S. Constitution, Amendment 1

PERC, on grounds that it had no jurisdiction, denied my First Amendment rights to speak, to compel witnesses to testify on my behalf, and to petition for redress of grievances or consideration of any prior actions by my employer. I was given no prior notice that 127 pages of documentation, attached to my appeal, wouldn't be in my file at the hearing. Those documents included rebuttals to all DMS disciplinary actions. PERC Deputy Clerk, Donna Eichhoefer --at the time I entered my first appeal (March 12, 1996)--told me they'd be in my file at the hearing for me to enter into the record as evidence; she said PERC would make the required copies, because I didn't have copy of the PERC rules when I filed them. The 127 pages weren't returned to me prior to the hearing, nor was I told to pick them up, and the prehearing conference was cancelled. I was not told they wouldn't be considered by PERC as evidence in the PERC order, or that I wouldn't be able to enter them into evidence from that file, as Eichhoefer had said.

After I received PERC's rules, I returned to ask Eichhoefer to verify her statement about the 127 pages of appeal documents. I also asked several times if I needed to keep all three copies of additional documents until the hearing, or I could file them ahead of time; she said, again, I could file them ahead of time and my file would be at the hearing for me to enter them into the record. I filed other documents, therefore, before the hearing, with all of the required copies served on DMS. The hearing officer cancelled the prehearing conference April 1, due to a scheduling conflict; it was not rescheduled. I wasn't given prior notice that my witnesses would be quashed; DMS distributed motions to quash during the hearing. Those witnesses could have verified the accuracy and quality of my work, as well as the current office procedures and workflow; their testimony would have refuted misrepresentations, in testimony by supervisors, which were used as a basis for PERC final orders. All witnesses subpoenaed from other agencies were

quashed during the hearing; all witnesses who did appear were allowed to remain in the room, even though I requested evoking the rule. PERC then rejected my testimony, on basis of credibility.

The hearing officer didn't bring my file to the hearing; he didn't tell me that until five hours after the hearing began. He took that conversation "Off the Record" (SR2-5-232). He only brought the ten documents that became my employee exhibits and he told me he wouldn't consider them in his recommended order and was rejecting them as evidence regarding the suspension (SR2-5-269:15 to SR2-5-274:25). He acknowledged, during the hearing, he was aware of the many documents I'd filed (SR2-5-26). He wouldn't allow me to enter any of my own set of documents, which I'd brought to the hearing. DMS wouldn't acknowledge that they had my complete employee file at the hearing as required by Fla. Admin. Code R. 38D-24.004(1)(c). None of my pre-hearing filings were available for me to enter into the record as required by PERC Fla.Admin. Code R. 38D-24.004(1)(d). DMS was allowed to enter all of their exhibits about prior disciplinary actions without any of the written rebuttals I'd written on those documents and returned to administrators when the disciplinary actions occurred.

My objections at the hearings were repeatedly overruled; my attempts to speak were repeatedly interrupted with interjections by the hearing officer and DMS attorney, so that it was difficult for me to speak and my sentences are broken and difficult to follow in the transcript. The tone of voice of the hearing officer was harsh or angered when he spoke to me during the hearing--a transcript does not indicate such conditions during a hearing.

I wasn't allowed, at either hearing, to take the witness chair to make an opening statement or enter evidence into the record first, pursuant to Fla. Admin. Code. R. 38D-24.009(2) and (3), on my contention that the facts do not justify the severity of the action taken by DMS. I was told that nothing I said or filed regarding prior DMS actions would be considered in making final determinations in the cases, but DMS would be allowed to discuss those disciplinary actions and enter them as evidence. PERC prevented

my cross-questioning witnesses about any prior actions or calling my own witnesses; because they were quashed, there is no evi-evidence in testimony, by co-workers, verifying my work record. (I exceeded standards of my position, but I was only given a satisfactory appraisal in October 1995.) PERC based all of their decisions on the prior DMS actions as established and proven fact and evidence of cumulative and progressive disciplinary actions; they said in orders that I had ample time to enter all documents into the record at the hearings; I failed to do so; I submitted no evidence of my employment record, or rebuttal to charges of insubordination or neglect, for mitigation. PERC blocked all post-hearing filings of other employment records saying I had ample time to enter them into evidence at the hearings. I didn't have any prior notice that would have enabled me to proceed differently; I had no litigation experience or familiarity with the proceedings. Some documents, also, were at the Tampa EEOC, and weren't available to me at that time. PERC rejected all of my post-filings of motions to enter evidence. PERC omitted some documents from the record.

Quashed witnesses from DMS personnel offices could have verified the Florida administrative code rules applicable to my position description and performance standards; standards for evaluating an employee's performance during a review period, and my Career Service rights; those administrative code rules have authority in Florida Statutes. PERC didn't take depositions of quashed witnesses after either hearing (after I'd given testimony, which was supposed to be considered evidence in PERC's record); then PERC rejected my testimony on the basis of credibility. I included in testimony references to Fla. Admin. Code R. 60K-8; I described DMS office procedures. I mentioned in pre-hearing filings and at the hearings that I'd spoken with personnel office administrators after each disciplinary action, and I'd spoken with them about my conflict of religion with work of the office in which I was employed; the personnel office has affidavits regarding my religion, that comply with Fla. Statutes.

I appealed at PERC, as unfair labor practice, the DMS denial of

reconsideration of a 1995 grievance committee decision; grievance issues included harassment and errors in my position description and performance standards. DMS took retaliatory disciplinary actions against me (written and oral reprimands). The suspension involves the content of those personnel documents and their interpretation, according to Fla. Admin. Code R. 60K-8 and other rules. The dismissal was a result of my attempt to obtain corrected position description and performance standards documents.

PERC rules say exceptions to its rules of procedure may be made to prevent manifest injustice; issues could be raised in the proceedings even if they were not raised prior to the hearings--Fla. Admin. Code R. 38D-14.001(2), 38D-14.003(2) and 38D-15.002 (2). I wasn't given consideration, even though I raised objections during and after the hearings. I had no prior legal experience in litigation of any kind. I haven't been represented by an attorney; all. work I've done I've had to learn as the proceedings progressed.

Fed. R Civ. P. 11 (1983 Amendment, paragraph 13) includes a statement that a court should take account of the state of a party's actual or presumed knowledge when a pleading or paper is signed. "Thus, for example, when a party is not represented by counsel, the absence of legal advice is an appropriate factor to be considered." That same amendment, paragraph 8, states: "The rule does not require a party or an attorney to disclose privileged communications or work product in order to show that the signing of the pleading, motion, or other paper is substantially justified. ..."

I submitted to the State appellate court and both federal courts, transcribed evidence that I was repeatedly blocked by PERC from receiving hearing for redress of grievances regarding any prior actions by DMS (SR2-5-26:16 to SR2-5-31:25; SR2-16-54 to 56). I made multiple sets of copies (7) of all of the documents filed at PERC with my appeal; I filed motions to enter them into PERC's record as evidence. I filed corrections to the transcript. Motions were denied because the documents already appeared to be in the record. (They are in the PERC record, but PERC never allowed me to enter them into evidence.) The court denied motion for

rehearing (Joint Appendix A-3509-23, 26). Since then, I've made more multiple sets of copies in the federal courts, as exhibits and to comply with a DMS request for production; DMS didn't acknowledge them in the federal district court.

When I appealed at the State court on the basis of defects in the proceedings and malicious prosecution, I provided documentary evidence (SR2-6; SR2-17; SR2-1 and SR2-13) and my testimony to refute PERC factual findings and conclusions of law. I provided testimony of co-workers (SR2-5-63 to 276; SR2-16-64 to 175) in support of my statements. I entered DMS motions to quash witnesses at the first PERC hearing; which weren't in PERC's record. The court barred everything that was not before PERC during its proceedings.

PERC may hear discrimination cases, but they refused because I had filed with the EEOC. I brought my appeals claiming disparate treatment and retaliation for filing harassment grievances. My employer (the State of Florida and one of its agencies--DMS) had an established internal commission (FCHR) for handling sexual harassment and employment discrimination complaints, but they did not process my complaint; instead of investigating it initially, they closed it, and I had to call an EEOC 800-telephone number (Miami, FL). The EEOC contacted the Executive Director of the FCHR; the Miami EEOC told me the FCHR is also an EEOC office for the northwestern region of Florida. The FCHR then told me they closed my case by mistake, but they were forwarding my complaint to the EEOC in Tampa. DMS then told me they'd wait for the EEOC decision, but the FCHR misplaced the file and didn't forward it to Tampa for almost ten months. I had to recopy and send to Tampa my own file, in August 1995, after being told for months by the FCHR they no longer had any documents at their office and, by the EEOC, that the FCHR hadn't sent them anything. The FCHR didn't forward my file until December 1995; the EEOC didn't investigate the charge at any time during my employment, and DMS and PERC refused hearing four grievances. (One 1996 grievance requested correction of the two personnel documents;

the 1995 grievance committee told my supervisors that should be done, but they refused to do so the entire time I was employed.) (Joint Appendix E-17 thru 22)

The State's grievance procedures provide that a panel shall be established to hear grievances within a month after one is filed, and I could request rehearing when the employing agency has violated Fla. Administrative Code Rules regarding my rights as a Career Service employee (Fla. Admin. Code R. 60K-9.004(6) (m)). DMS didn't provide hearing of a 1994 harassment grievance and didn't provide a panel to hear a 1995 harassment grievance until I went to the agency Secretary and requested reassignment. DMS refused to allow me to reassign or promote out of the offices in which I was employed, and refused (February and March 1996) to rehear the 1995 grievance committee decision; PERC excluded all prior DMS actions, except to allow DMS to claim and use them as cumulative evidence against me. (In 1998, I was told by the Commissioner Chairman at PERC, in a telephone conversation, that PERC's rules which governed their proceedings in 1996, when my suspension and dismissal appeals were before PERC, were repealed in 1997; he said that PERC was told by the State legislature that they could no longer use them, but he didn't give further explanation. I filed at the federal district court a copy of a PERC notice that it was in compliance with new, uniform rules of procedure, February 1998.

2. Constitution of the State of Florida, Sections 2, 4 and 23

The Florida First District Court of Appeal barred anything that was not before PERC, and PERC had barred all aforementioned issues. I was unemployed; from November 1996 until June 1997, I was without income or unemployment compensation. I had to make continued, multiple job search efforts, and I could reserve only two hours each day, on a space-available basis, at the public library in order to prepare documents for the courts.

I provided to the federal appellate court supplemental records of transcript pages verifying PERC barred anything related to these issues, and hundreds of pages of exhibits I'd filed with my appeal at PERC--then copied again (multiple copies) for the State court,

PERC and DMS--were barred from entry into the record in the State court as evidence (Joint Appendix A-3509-23; SR1-3).

The State court didn't schedule any trial or hearing before their judges or give written explanation of the final opinions, and their documents say they are an OPINION. The Opinions appear to affirm my appeal, not deny it. They say "An appeal from an order of the Public Employees Relations Commission. AFFIRMED PER CURIAM." Every attorney and federal court since then has been saying the State court upheld the actions against me by PERC and my employer. When I tried to retain an attorney in 1996/7, I was refused counsel, many times on the assertion that I'd already lost. I haven't been able to obtain legal counsel since 1997 either.

The EEOC told me they wanted nothing to do with the State court cases and the federal investigation was completely separate from the court and PERC actions; because the EEOC investigation was in progress by that time, I only filed in a brief before the State court one paragraph that I believed my First Amendment rights and civil rights had been violated. My appeals were brought only on rule challenges, malicious prosecution and irregularities in the proceedings. Neither DMS, PERC, or the State court ever told me I could only appeal grievances to the Supreme Court of the United States or to the Supreme Court of the State of Florida. The federal court did not tell me that when I filed the civil action in May 1997. I was not told that until the magistrate's report and recommendation, February 1998, in this case against PERC.

The U.S. District Court didn't allow hearing or trial; the magistrate who wrote the report and recommendation in two civil actions had ordered me not to file any of the exhibits at the court. I haven't been able to enter any of the documents I filed on March 12, 1996, as evidence at any court or PERC. I included an entire section in my Appellant Brief filed at the U.S. appellate court answering and objecting to every issue raised in the Magistrate's Report and Recommendation and subsequent dismissal of my case. I included objections to the same Magistrate Judge handling both civil actions (Appellant Brief, pp. 14-22).

3. U.S. Constitution, Amendment 7

The U.S. District Court set no value or "Demand" amount on either civil action I filed, but my Complaints were filed requesting reinstatement of my employment and reversal of actions taken against me, which would result in compensation exceeding twenty dollars. PERC provides for back payment for wages or benefits lost as a result of actions against me by my employer. Since I filed the appeal at PERC, the minimum salary for the Fiscal Assistant I has been increased by about $1,850 per year. I went to the Clerk's office at the U.S. District Court when I first received a copy of the dockets with the $0.00 Demand recorded on them; I said I had requested in my Complaint (R1-2-17) resolution, or relief, that had monetary value. The clerks told me that the Court enters Demand in that way on all civil actions such as those I filed.

4. U.S. Constitution, Article I, Section 10

The State's Career Service System personnel documents are the equivalent of a contract of employment; they establish the validity of the employer-employee relationship; they set forth the terms and conditions of employment. Florida Statutes and Administrative Code Rules govern the way those personnel documents are written and the content of them. DMS supervisors' refusal to provide accurate, official personnel documents constitutes a breach of contract and violates Florida Administrative Code Rules.

My request for a demotion was made to enable me to obtain work in an office that would not conflict with my religious background and beliefs; my request was voluntary, but the supervisors Yates and Dearman treated it as a penalty, removing some privileges I'd had, as a Career-Service employee, even when I was in a Clerk Typist Specialist position. I had been trying to obtain a position in an Accounting Section for three years. I had college degree in Business Administration with three semesters of accounting; 10-15 yr. accounting/bookkeeping experience in clerical positions and auditing experience; I had training in DMS accounting procedures and had performed fiscal duties in the Clerk Typist Specialist position. I had to request demotion to an entry-level position that

would have been a promotion from the Clerk Typist Specialist position I held before I was involuntarily promoted in 1994.

I was falsely accused by DMS, in suspension and dismissal actions, of violations (insubordination and neglect of duty) listed in Fla. Admin. Code R. 60-6.007, which has authority in Florida Statutes; my employment was terminated and my appeals before PERC denied without my being able to call subpoenaed witnesses. PERC quashed all witnesses who could have verified my employment record and work performance. PERC didn't give me prior notice before the hearing; my entire file wasn't at the hearing and PERC refused to allow me to enter into evidence any of my own documents, which I'd brought to the hearing. PERC refused in subsequent orders to allow me to enter post-hearing documents into evidence, claiming I had ample opportunity to do so at the hearings, but I didn't know how to proceed differently.

I provided to all tribunals or courts documented evidence and/or testimony that the Fla. Administrative Code Rules, which form the basis of a contract of employment, were violated or neglected in some way by DMS, and I hadn't violated performance standards. My supervisor took all reprimand actions against me retroactively, disregarding the fact that I'd received approval for my actions. I was denied right to compel administrative staff witnesses who'd told me in conferences that I had a valid complaint or had made statements to me that I gave as testimony before PERC; my testimony was excluded as evidence. I was denied witnesses, who could have verified misstatements made by my supervisor and the administrator regarding check endorsements and work flow. (R1-2-7(14); R1-2-8(15) through (17); R1-2-8(1))

I filed the 1995 grievance regarding harassment by supervisors who refused to provide me with accurate, official personnel documents (R1-2-4(7); R1-2-11(8); R1-2-13(5)); a grievance committee recommended in its report (SR2-1-4; PERC index page 85), that:

> "detailed procedures regarding all aspects of Mrs. Kridel's job (including breaks, hours of work, use of the phone, receipt and processing of checks, etc.) are formalized in a

written statement which includes time-frames. This document should be provided to Mrs. Kridel, and discussed with her. At the same time we recommend a review of her position description in order to assure that it accurately reflects what is expected of her."

This was not done. DMS also said a memo (SR2-1-4; PERC Vol. I, page 81), that my supervisors were asked to provide me with "specific written instructions regarding work expectations and procedures." Supervisors refused to do this, DMS and the personnel office bureau chief refused to review the grievance decision when I wrote the agency Secretary in 1996. (R1-2-16(3) and R1-2-13(5))

I wasn't given opportunity for "oral argument" or discussion with supervisory staff at the time the grievance committee met; I wasn't given written record of what was said to, or by, the committee, until the memo from the DMS (September 1995). I didn't fail to follow instructions on June 8 and 9; I was not insubordinate to anyone. I received supervisory approval for all of my actions at the time they occurred on those two days and all of the days before that. A higher level supervisor than Dearman (Janice Lowe) requested my help during my scheduled half-hour lunch on June 8; Dearman took sick leave that afternoon. He approved my hours the next day, initialing my timesheet and he approved in advance the additional half-hour I worked on Friday, June 9, which was the beginning of a pay period. My hours could be flexed to the next week. He signed my timesheet at the end of each week in that pay period, approving all hours I worked.

<u>Allegation of Neglect of Duty</u>

I didn't fail, or refuse, to endorse any checks in 1996 (January or February). The witnesses were quashed who could have verified I endorsed all of the checks at the time they were given to me. Dearman brought the 12 checks on February 14, 1996, I endorsed them immediately and took them to Richard Gowdy, who always received my work and who did the deposits for DMS. I never told the employee, J. White, rudely to get out of my office, and I never refused to endorse any checks she brought to me. She didn't give

me any checks to endorse, place any on my desk or in my incoming work tray, identify to me any check-log that had unendorsed checks, or ask me to endorse checks. She was holding a few checks in her hand when she came into my office, but she just stood before my desk lecturing me that I was not doing my work, I was not endorsing my checks, etc. Other employees occasionally received checks from customers and endorsed them. (Neglect of duty is not defined in Fla. Admin. Code R. 60-6.007.)

At the time she came to my office, I was in the middle of processing and endorsing a huge batch of checks for a new check log report to be completed that morning, and I said to her courteously, "Please leave." I told her I'd endorsed every check that crossed my desk since I took the position. She walked out of my office taking the checks with her. She was just a co-worker, not my supervisor. Afterward, my supervisor brought 12 checks and said, "Nancy, please endorse your checks;" he never raised any issue of neglect of duty, performance deficiency, insubordination or even objection and he did not mention White. I had an allowable percentage of error in the processing of my work each month that wouldn't have been exceeded in January or February (SR2-6-5, 9); I had other rights under Fla. Admin. Code R. 60K-8.003(1), (2) and (3) that applied, if I had exceeded it or my work had been unsatisfactory.

The hearing officer's interjections, April 11, 1996, make some of my statements appear to negate my assertion that I immediately endorsed all checks that were returned to me for endorsement, because I was referring to checks returned to me on two different days--those from the January 18 check log and those returned to me on February 14. I'd only recently received two malicious reprimands (January 29 and February 1, 1996), and the endorsement procedure is not specified in writing in my position description or performance standards, nor is it part of receiving, sorting, batching and logging procedures for processing receivables at DMS (SR2-8-14; SR1-4-31 to 39; SR1-6-18). Fla. Admin. Code R. 60K-8.002 (2) states: "Employees shall not be required to meet work expectations or performance standards which have not been defined on

their official position descriptions or identified to them in writing as being part of the performance standards/expectations requirements of their positions." I put that quote, in a written rebuttal, on the copy of the reprimand I received January 29, 1996; I returned it to supervisors before February 1. No DMS supervisor discussed, at any time during my employment, check endorsement procedures or identified it as a duty with a zero-tolerance error ratio, as PERC stated in findings of fact and conclusions of law. They only told me to see White for explanation of work procedures. She didn't mention any error ratios or zero tolerance. Endorsements require pre-audit of each check; those with defects weren't endorsed.

PERC drew conclusions regarding restrictive endorsements that were not applicable or true (SR2-8-14). Barnett Bank, at which DMS deposited its checks, verified in October 1996 that PERC's (and my supervisor's) claims were not consistent with the bank's procedures (SR2-6-8) (cf. SR1-6-21, 22 and SR1-4-36, 37). My position description had been constructed combining the duties of two or three positions, including a higher level fiscal position; the pre-audit and endorsement procedures don't appear on my personnel documents (SR2-6-2 thru 9). I was consistently performing work of a higher classified position. My performance standards were not accurate (SR1-4-31 to 39; SR1-6-18 to 22); they were impossible to do in conformance to current office procedures.

Allegation of Insubordination--Suspension Action by DMS

When the two written reprimands were given (January/February 1996), I was processing a five-times greater workload than had White the previous year. I was on vacation two weeks in January and my workload fluctuated greatly at the beginning, middle and end of each month. (That is when days were reported alleging that I was working beyond 5 p.m.) I didn't work enough time on any day to require overtime, which is calculated in quarter-hour increments; I was allowed eight minutes. (Fla. Admin. Code R. 60K-5.040(2)) I had customer service duties requiring use of my office and computer files right up to 5 p.m.; I had a double workload each day to process, because the mailroom didn't bring the office mail

until after 2 p.m. I always lost my afternoon break, trying to clock in the new mail without requiring overtime. At 5 p.m. (between 5 p.m. and 5:08 p.m.) I shut down my computer files; I signed off work at 5 p.m. (SR1-4-40 to 56) I had received my employee paycheck for that pay period. I wasn't working. I was only in the building after 5 p.m.; I went to the washroom and to get my things from the employee refrigerator. One DMS witness who testified (Thelma Dixie, a supervisor), had allowed me the additional time I was in the building one day. I was the only employee in the office with regular customer service duties in the lobby. The short time I stayed after 5 p.m. was justified by those duties and the defects in my position description and performance standards, which supervisors refused to correct. My supervisor signed/approved my time sheets at the end of each pay period (SR2-5-10, 11) during weeks of February 1996, before the suspension action was initiated. The written notations adjusting my hours worked on those timesheets weren't made until mid-March 1996.

I was not allowed or offered the privilege of offsetting my hours on the days for which I was suspended, when I was processing the greatest workload the office had experienced. Fla. Admin. Code R. 60K-5.025(1)(b) gives employees the privilege of offsetting hours. Yates also testified at hearing that she allowed employees to flex their time in order not to incur overtime and that she told two employees to offset (flex) their hours for additional time worked (SR2-5-166:23 to 167:15). PERC was mistaken to say in its order that Yates told the two employees to adjust their hours for additional time worked (overtime). (Joint Appendix E-22, 23)

Yates also testified she wasn't aware of other employees who remained at the building, because she always left work at 4:15 p.m. (SR2-5-186:3-16) A co-worker, Simone Johnson, testified that she was aware of other employees who remained in the building after 5 p.m. without authorization and no disciplinary actions were taken against them (SR2-5-217:2-218:5). Tracy Cain also testified, then withheld affirmation of her answer on a repeat of my question. SR2-5-211:3-212:14) I think it was because her supervisor, Yates,

was sitting, literally, right next to her at a conference table as she testified. PERC excluded both Cain's and Johnson's testimony from its final orders. I wasn't given an impartial hearing. Yates testified that no similar disciplinary actions were taken against other employees (SR2-5-188:11 to SR2-5-189). She testified that she knew of no agency directives issued by the Secretary regarding use of the buildings (SR2-5-186; Joint Appendix E-23).

I was prevented (SR2-5-71 to 74 and SR2-5-275:13 thru 276: 25) from obtaining testimony from Anne Parker, who came regularly to DMS just before or at 5 p.m.--as did others from the other State agencies--bringing documents to me to receipt and clock in on the same day. They came with full knowledge of their supervisors and DMS supervisors; they weren't disciplined. Parker always spoke casually with my supervisor after 5 p.m. (R1-2-6(11); R1-2-7(12) thru (14); R1-2-8(15); R1-2-8(1)); she'd done the same when I worked in the Clerk Typist Specialist position and was receiving premium transmittals, as I later did in the fiscal position--using the same time clock (Joint Appendix E-20 to 22; 24-25).

Allegation of Insubordination--Dismissal Action

PERC wrote in its orders that I was insubordinate, defining it as the disobedience of a reasonable order in a persistent, willful or overt defiance of authority, but I didn't challenge the agency's authority, except as it applied to Florida Statutes and Administrative Code Rules governing Career Service System procedures for employee personnel documents, grievance procedures, and employee work schedules. I was consistently working a full eight-hour day maintaining exceeds standards performance. (I didn't receive an accurate or impartial six-month performance appraisal in October 1995, complying with Fla. Admin. Code R. 60K-14.)

I didn't refuse to show my supervisor what I was copying April 22, 1996, or intentionally imply refusal to show him anything; I was copying DMS forms used each day in the performance of my work; I showed them to him and told him how many I copied on a regular basis at work, without his asking me how many I'd copied (SR2-16-120 to 128, 137-142). I'd also copied approximately 12-

15 pages of personnel records I'd received from Dearman April 19 with the copy of my written statement, dated April 18 (SR2-17-Routing and Transmittal Slip); he put them on my desk, when I asked if he had seen them, then left the room without asking me to discuss them, scheduling time for me to meet with him, or saying anything about them. I was told by the Director's office, April 22, the Director cancelled a meeting she'd scheduled for me that morning; she didn't reschedule it. I was told to give the documents I'd brought to work that day to the Bureau Chief, and I didn't have copies of the documents Dearman had given me. I went to make a set for her, duplexing to the back of the documents from Dearman, and using my own file copies. The hearing officer in the dismissal action declined to make any decision about unauthorized use of office equipment. He also said the agency charge didn't support dismissal. (Joint Appendix A-4568-7, ¶3; p. 4, ¶ #12.; p. 11, ¶ #2.)

I was accused of refusing to show him a grievance I was copying, but I hadn't written the grievance out April 22 or copied one; when I told Dearman that day that he had 14 days to reply, I was referring to the statement in grievance procedures written on the back of the grievance form. It was not my intent to refuse to show him copies of anything, and I had held up a grievance form to show him. I didn't put any copies away. I never said any of the quotes he placed in the DMS predetermination letters. Neither he nor Cook, who came to my office with him, explained to me or told me that the State--or they--had a right to see each and every document I copied. The hearing officer told me April 11 that I needed to file a grievance about the personnel documents. I'd already given Dearman the written statement April 18 listing deficiencies in my personnel documents, and he had 14 days to reply to that before a grievance could be filed; I'd also spent the entire preceding year speaking with Dearman, Yates, and others trying to get the personnel documents corrected. I'd filed a grievance (May 1995). Throughout my employment, I followed established grievance procedures, taking disputed issues about disciplinary actions to next-higher level administrators; I requested permission each

time. George Haynie, Director of DMS personnel, told me January 25, 1996, he thought I had a valid complaint. PERC quashed his testimony. Two written reprimands and the suspension occurred immediately after I had sought assistance from Haynie in January to obtain review of the 1995 grievance decision and correction of my position description and performance standards; they were retaliatory actions by Dearman, who tried to prevent my meeting with Haynie (SR1-4-28 to 30). He never spoke to me courteously.

PERC barred any discussion and testimony of those events from consideration (SR2-16-120 to 128, 137-142; SR2-20). PERC accepted the recommended order without having read the transcript, and the hearing officer hadn't read it (SR2-18). When I asked reconsideration (SR2-21), my motion was denied (SR2-22), even though testimony by others supports my statement that requests I made to employees were work-related and I didn't take complaints to them. (SR2-16-63:23 to 65:25; SR2-16-68:19 to 69:8; SR2-16-97 to 102; SR2-16-130 to 134; SR2-16-153 to 158:5; SR2-16-172 to 174) I asked simple, work-related questions (SR2-17-3, 4, 5, 6); Yates testified, also, that she didn't place any restrictions on informal conversation of her employees (Joint Appendix E-23).

All Fla. Admin. Code Rules listed on pages 2-3 of this petition (Joint Appendix D) apply to my appeals and the other case against DMS. The predetermination letters in both the suspension and dismissal actions were irregular with respect to and violated requirements of the Career Service Review and Performance Planning System (Fla. Admin. Code R. 60K-8). DMS didn't comply with the requirement that those letters should be mailed to me by certified mail--Fla. Stat. (1995) § 110.227(5)(a); I was confronted during work hours, in the presence of coworkers and customers.

5. U.S. Constitution, Amendment 19

I have a vote, or voice; I am guaranteed right to speak that can't be denied or abridged by the United States or by any State. I filed grievances (1994 and 1995) that raised sexual harassment issues as well as harassment, in general, regarding my position description performance standards; no grievance committee was established to

hear them. In 1994 the people to whom I'd served copies of the grievance (Harmon, Abbott, and the new Director) removed me from my position, telling me I wasn't getting along with my supervisor. That was three months after I'd filed the grievance and no committee had been established. They told me they didn't think actions to which I objected were wrong--other employees of the division hugging and kissing callers and clients to the office, as well as other State employees, right in front of my desk or while I was trying to obtain customer service for those people. Those actions were embarrassing; they occurred during a period of two years; I wrote the DMS Secretary (1992) regarding my supervisor's comments to me when I took objections to her (Appendix B, 1.). The DMS pamphlet, "An Issue of Respect," identifies such actions as examples of sexual harassment and states: "a victim does not have to be the person toward whom the conduct is aimed, but could be anyone affected by the offensive conduct." The pamphlet follows federal EEOC guidelines and DMS Fla. Admin. Code R. 60-5, Discrimination Complaints; Sexual Harassment, which has statutory authority in 20.05(1)(b), (5), 110.201(2) and 120.53(1) Fla. Stat. (1995).

29 CFR Chapter XIV [7-1-98 Edition] §1604.11(a) defines sexual harassment as including verbal or physical conduct of a sexual nature

> "when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."

The Code states that harassment on the basis of sex is a violation of Section 703 of Title VII, and the employer is responsible for acts of sexual harassment in the workplace, with respect to conduct between fellow employees, "where the employer (or its agents or

supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action." 29 CFR Chapter XIV [7-1-98 Edition] §1604. 11(d)

> "An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. ..." 29 CFR Ch. XIV [7-1-98 Edition] §1604.11(e)

The people who removed me from my position, involuntarily promoting me, told me that, if I didn't accept it, they were going to take other action to remove me from my position to another section of the same offices. I'd begun taking my concerns to an FCHR counselor in 1991. At DMS, I took my concerns regarding the conflict of religion to personnel administrators (Abbott and the Bureau Chief) and to supervisors. Before I was hired, I spoke with the supervisor about my religious background and conflict with the work regarding medical treatment or medical procedures and treatment of disease; she told me Accounting Section positions would not involve any work regarding medical insurance claims, etc. She said I could apply for them after reassigning. When I reassigned, I gave DMS written notice that I was a Christian Scientist and was requesting reassignment after speaking with the FCHR. I exceeded standards during State employment since 1990. I have an excellent education and employment record; I had no history of disciplinary actions. I was not allowed to promote or reassign to another DMS division after that; I haven't been able to obtain permanent employment in any other State agency, either at the time I was employed by DMS or since my position was terminated. I've made hundreds of applications, taking them to almost all the Florida state government agencies. When a Career Service employee asks to reassign and a position becomes available, that employee is supposed to be given first consideration and the position is removed from competitive advertisement.

Instead of hearing the 1994 harassment grievance or assisting me in reassigning or promoting to another division; instead of providing personnel documents for the Sr. Clerk position; instead of correcting my position description and performance standards or reviewing the 1995 grievance committee decision, DMS administrators interpreted those issues as being my personal problems and tried to enforce counseling outside my religious faith. (Some have implied that I was abused as a child, which is not true.) I was born and raised as a Christian Scientist, and I've adhered to the tenets of that church all my life; I've abided by laws applicable to Christian Scientists in the states in which I have resided. Applicable to my cases are Public Law 103-317, Title VI, Aug. 26, 1994, 108 Statute 1774; Title XLII, U.S.C., Ch. 21 § 2000(j) and § 2000e-3(a); Constitution of the State of Florida, Sections 2 and 23; and Fla. Stat. (1995) § 223.061(3), § 415.113 and § 760.10(1)(a) and (b). I filed these civil actions out of respect for my parents, who have given me a good heritage and provided for me well as a child.

Fla. Stat. (1995) § 760.10(1)(a) and (b)

For the Sr. Clerk position in which I was placed, I didn't receive performance standards. (I didn't receive performance standards or personnel documents for a new review period after six months probation (SR2-4-12); I asked for them.) My desk was put in a storage room used for microfilming, in another building and apart from all of the employees, with no telephone or customer service duties or communication with other co-workers as part of my position duties. I was told during four years (1992-1996) by supervisory staff to whom I applied for entry-level fiscal and clerical positions within DMS and other state agencies that my work wasn't professional and my education and work experience weren't what they were looking for, even though I met--usually exceeded--the qualifications for all positions. I had no prior disciplinary record, 15 years part-time teaching experience and 10-12 years employment experience.

DMS witnesses (Yates and Abbott) whom I'd subpoenaed to bring documents related to the 1994 and 1995 grievances did not

bring them to the hearing and PERC did not require that evidence from them. (Appendix B, 1.)

The grievance committee report (SR2-1-4) stated that the incident I reported about Dearman (my supervisor in 1995) "is beyond the scope of the committee and would properly be referred to an entity such as the Commission on Human Relations. ..." (Appendix B, 5.) The report didn't give any warning to supervisory staff against improper behavior. I was not granted rehearing of the grievance committee decision (Appendix B, 9.), when I wrote to Secretary Lindner, February 1, 1996 (SR2-13-6, indexed as pp. 317-457 of the PERC Record), regarding deficiencies in my personnel documents and performance standards. (Appendix B, 8.; Appendix B, 1.-3., 6., 7., were attachments to that memo; see, also, Appendix B, 4.) PERC quashed my witness from the FCHR, and the State Court barred anything that wasn't already before PERC.

Affidavits of two quashed witnesses (Joint Appendix E-5, 6) and the statements of Gowdy, Pelt and White verify I took no personal complaints to co-workers; they negate the PERC orders charging me with insubordination. I never discussed disciplinary actions or my religion with co-workers; I took my concerns to administrators. Gowdy's statement (Joint Appendix E-7; also, E-1 thru 6) and my timesheets refute the DMS reprimands, suspension and cumulative grounds for dismissal.

Title 5, U.S.C. § 556(e) states:

> "The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with § 557 of this title and, on payment of lawfully prescribed costs, shall be made available to the parties. When an agency decision rests on official notice of a material fact not appearing in the evidence in the record a party is entitled, on timely request, to an opportunity to show the contrary."

Title 5, U.S.C. § 706(2) requires:

> "To the extent necessary to decision and, when presented, the reviewing court shall decide all relevant questions of

law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall--

(1) compel agency action unlawfully withheld or reasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and and conclusions found to be--

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party and due account shall be taken of the rule of prejudicial error."

Fed. R. Civ. P. 60(a) provides that:

"Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at anytime on its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court."

Fed. R. Civ. P. 60(b) states:

"On motion and upon such terms as are just, the court may

relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons:
(1) mistake, inadvertence, surprise, or excusable neglect;
(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
(3) fraud whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
(4) the judgment is void;
(5) the judgment has been satisfied, released, or discharged or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
(6) any other reason justifying relief from the operation of the judgment.
The motion shall be made within a reasonable time and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C., § 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action."

CONCLUSION

My petition should be granted to review the PERC, State and Federal Court decisions; I was denied my Constitutional rights

throughout the proceedings at PERC. No basis exists to warrant suspension or dismissal pursuant to Fla. Admin. Code R. 60-6.007. I deserve a decision in support of my appeals in both cases, pursuant to Title 5, U.S.C., § 706(2), Fed. R. Civ. P. 60(a) and (b), Fla. Stat. (1995) §447.208 (3)(b) and (d), §760.10(7), and §760.11(5).

Respectfully submitted,

Nancy S. Kridel

October 25, 1999

Date

Nancy S. Kridel, Petitioner Pro Se
3989 Woodville Highway, Lot 58
Tallahassee, FL 32311-7453
(no telephone number at this time)

UNITED STATES COURT OF APPEALS
For the Eleventh Circuit

No. 98-2598
Non-Argument Calendar

District Court No. 4:98-CV-17

NANCY S. KRIDEL,

Plaintiff-Appellant,

versus

FLORIDA PUBLIC EMPLOYEES RELATIONS COMMISSION,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Florida

Before TJOFLAT, HULL and MARCUS, Circuit Judges.

JUDGMENT

This cause came to be heard on the transcript of the record from the United States District Court for the Northern District of Florida, and was taken under submission by the Court upon the record and briefs on file, pursuant to Eleventh Circuit Rule 34-3;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the judgment of the said District court in this cause be and the same is hereby AFFIRMED.

Entered: April 15, 1999
For the Court: Thomas K. Kahn, Clerk
By: /s/ Matt Davidson
Deputy Clerk

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
APR 15 1999
THOMAS K. KAHN
CLERK

ISSUED AS MANDATE
JUL 27 1999

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-2598
Non-Argument Calendar

D.C. Docket No. 4:98-CV-17-WS

NANCY S. KRIDEL,

Plaintiff-Appellant,

versus

FLORIDA PUBLIC EMPLOYEES RELATIONS COMMISSION,

Defendant-Appellee.

Appeal from the United States District Court for the
Northern District of Florida

(April 15, 1999)

Before TJOFLAT, HULL and MARCUS, Circuit Judges.

PER CURIAM:

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
April 15, 1999
THOMAS K. KAHN
CLERK

Nancy S. Kridel, pro se, appeals the district court's dismissal of her civil action for lack of subject-matter jurisdiction. Kridel's action arises from appellate proceedings in state court affirming the administrative agency's decision to uphold her suspension and dismissal from the Florida Department of Management Services.

She contests the district court's finding that the Public Employees Relations Commission ("PERC") was not a properly named defendant and her action is barred by the Rooker-Feldman doctrine. She argues that the she did not have available the opportunity to seek review or redress of employment-related grievances and prior disciplinary actions in the PERC proceedings because the proceedings were procedurally flawed. She challenges the previous state-court judgments.

The district court may sua sponte dismiss claims based on lack of subject-matter jurisdiction under Fed.R.Civ.P. 12(h)(3). See Bell v. Hood, 327 U.S. 678, 682-82, 66 S.Ct. 773, 776, 90 L.Ed. 939 (1946). This kind of dismissal is reviewed de novo. United States v. Blue Cross & Blue Shield of Alabama. 156 F.3d 1098, 1102 (11th Cir. 1998).

Review of the civil complaint and district court order, and consideration of Kridel's brief reveals no reversible error. Because Kridel's claims were inextricably intertwined with state-court judgments and she had a reasonable opportunity to litigate her federal claims in state proceedings, the Rooker-Feldman doctrine barred the district court from reviewing final state-court judgments and, hence, the district court did not err in finding that it lacked subject-matter jurisdiction. See Dale v. Moore, 121 F.3d 624, 626 (11th Cir. 1997) (under the Rooker-Feldman doctrine, a district court lacks jurisdiction to review, reverse, or invalidate a final state court decision).

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-2598

NANCY S. KRIDEL,

Plaintiff-Appellant,

versus

FLORIDA PUBLIC EMPLOYEES
RELATIONS COMMISSION,

Defendant-Appellee.

On Appeal from the United States District Court for the
Northern District of Florida

ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING EN BANC

(Opinion_____, 11th Cir., 19__, _____F.2d_____).
Before: TJOFLAT, HULL and MARCUS, Circuit Judges.

PER CURIAM:
The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5, the Suggestion(s) of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ S. Marcus
UNITED STATES CIRCUIT JUDGE

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JUNE 24, 1999
THOMAS K. KAHN
CLERK
ORD-42
(6/95)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-2598-II

NANCY S. KRIDEL,

Plaintiff-Appellant,

versus

FLORIDA PUBLIC EMPLOYEES
RELATIONS COMMISSION,

Defendant-Appellee.

On Appeal from the United States District Court for the
Northern District of Florida

ORDER:

(X) The motion of the Appellant, Nancy S. Kridel for ( ) stay ( ) recall and stay of the issuance of the mandate pending petition for writ of certiorari is DENIED.

( ) The motion of the Appellant, Nancy S. Kridel for ( ) stay ( ) recall and stay of the issuance of the mandate pending petition for writ of certiorari is GRANTED to and including _____, the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within the period above mentioned there shall be filed with the Clerk of this Court the certificate of the Clerk of the Supreme Court that the certiorari petition has been filed. The Clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon expiration of the stay granted herein, unless the above mentioned certificate shall be filed with the Clerk of this Court within that time.

( ) The motion of the Appellant, Nancy S. Kridel for a further stay of the issuance of the mandate is

GRANTED to and including _____, under the same conditions as set forth in the preceding paragraph.

( ) IT IS ORDERED that the motion of the Appellant, Nancy S. Kridel, for a further stay of the issuance of the mandate is DENIED.

/s/ SM Marcus
UNITED STATES CIRCUIT JUDGE

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JUL 23, 1999
THOMAS K. KAHN
CLERK

ORD-45

UNITED STATES COURT OF APPEALS
For the Eleventh Circuit

No. 98-2598-II

NANCY S. KRIDEL,

Plaintiff-Appellant,

versus

FLORIDA PUBLIC EMPLOYEES RELATIONS COMMISSION,

Defendant-Appellee.

On Appeal from the United States District Court for the Northern District of Florida

---

ORDER:

Appellant's "motion for rehearing or amendment of order denying stay of mandate and judgment...", construed as a motion for reconsideration of the July 23, 1999 order denying stay of the mandate is denied.

/s/ Stanley Marcus
UNITED STATES CIRCUIT JUDGE

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
OCTOBER 4, 1999
THOMAS K. KAHN
CLERK

Civ 31

(Rev 5/83)

JUDGMENT IN A CIVIL CASE

United States District Court	**Northern District of Florida**
NANCY S. KRIDEL	Docket Number 4:98cv17-WS
v.	Name of Judge WILLIAM STAFFORD
PUBLIC EMPLOYEES RELATIONS COMMISSION	

X **Decision by Court.** This action came to trial or hearing before the Court with the judge (magistrate judge) named above presiding. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED

DISMISSED WITH PREJUDICE

Robert A. Mossing, Clerk — March 13, 1998
By Deputy Clerk SHARON WILLIS
/s/

ENTERED ON DOCKET March 13, 1998 BY
(Rules 58 & 79(a) FRCP or 32(d)(1) & 55 FRCRP)

OFFICE OF CLERK
U.S. DISTRICT CT.
NORTHERN DIST. FLA.
TALLAHASSEE, FLA.
98 MAR 13 AM 10:43

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

NANCY S. KRIDEL, Plaintiff

v. 4:98cv17-WS

PUBLIC EMPLOYEES RELATIONS
COMMISSION, Defendant

ORDER ADOPTING THE MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

Before the court is the magistrate judge's report and recommendation docketed February 17, 1998. See Doc. 4. The magistrate judge recommends that the plaintiff's complaint be dismissed with prejudice for lack of subject matter jurisdiction.

The plaintiff has been furnished a copy of the report and recommendation and has been afforded an opportunity to file objections pursuant to Title 28, United States Code, Section 636(b)(1). Having considered the record, including the plaintiff's objections to the report and recommendation, see doc. 6, the court has determined that the magistrate judge's report and recommendation should be adopted.

Accordingly, it is ORDERED:

1. The magistrate judge's report and recommendation is hereby ADOPTED and incorporated by reference in this order of the court.

2. Plaintiff's complaint, and this action, are hereby DISMISSED with prejudice.

3. The clerk is directed to enter judgment accordingly.

DONE AND ORDERED this 12th day of March, 1998.

/s/

WILLIAM STAFFORD
SENIOR UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET 3/13/98
BY /s/ SW
Rules 58 & 79(a) FRCP or 32(d)(1)
& 55 FRCRP

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U.S. DISTRICT CT.
NORTHERN DIST. FLA.
TALLAHASSEE, FLA.
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IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

NANCY S. KRIDEL,

Plaintiff 4:98cv017-WS

v.

PUBLIC EMPLOYEES RELATIONS
COMMISSION,

Defendant

REPORT AND RECOMMENDATION

Plaintiff, proceeding *pro se*, has filed what has been styled as a "Civil Action Related to Complaint Under Title VII of the Civil Rights Act of 1964," doc. 2. Plaintiff has paid the filing fee.

Plaintiff is challenging the procedures and findings of the Public Employees Relations Commission [PERC] in upholding her dismissal from the Florida Department of Management Services [DMS]. Doc. 2. Following the PERC hearings and determinations, Plaintiff filed appeals with the First District Court of Appeal for the State of Florida. *Id.* The state court affirmed the administrative agency's ruling. This case is admittedly related to those proceedings. *See* doc. 2, pp. 1, 17.

It is clear that Plaintiff's complaint is based on the same set of facts presented by Plaintiff in another case currently pending before this court. *See* doc. 2, p. 1; and case no: 4:97cv198-MMP. Plaintiff has the opportunity to litigate her claims of discrimination by her former employer, the Florida Department of Management Services, in that case. To the extent that Plaintiff's complaint again described the difficulties she experienced as an employee of the Florida Department of Management Services, her grievances against supervisors Dearman and Yates, and being the subject of "vicious, unreasonable supervision and disciplinary actions" by her employer, it is redundant. Doc. 2. Plaintiff may not engage in duplicitous litigation. Putting forth successive claims which are

already being litigated in a concurrent action burdens already limited judicial resources and diverts the court's time and energy away from other claims. *See* In re Tyler, 839 F.2d 1290, 1292 (8th Cir. 1988). Delays in the adjudication of cases creates public dissatisfaction and frustration with the courts. Tyler, 839 F.2d at 1293. This case should be dismissed. It is clearly a repetitious claim, it has propagated needless delay in other cases, and should not be permitted to proceed.

More importantly, to the extent that Plaintiff is contesting the state administrative proceedings in PERC case CS-96-128 and CS-96-254, Plaintiff had the availability of review in the state appellate court. *See* Rule 9.030(b)(1)(C); FL. CONST.art. V, § 4. Indeed, Plaintiff took advantage of the opportunity to appeal the rulings by PERC. *See* doc. 2, p. 1; Kridel v. Department of Management Services, 694 So.2d 750 (Table) (Fla. 1st DCA 1997) (PERC case no.: CS-96-128); Kridel v. Department of Management Services, 695 So.2d 703 (Table) (Fla. 1st DCA 1997) (PERC case no.: CS-96-254). Plaintiff states in the complaint *sub judice* that she raised the various issues previously. *See* doc. 2, p. 5, ¶ 10; p. 8, ¶ 17, ¶ 1. Plaintiff further states that the state court "appellate proceedings specifically appeal the actions of the Public Employees Relations Commission in their proceedings...." *See* doc. 2, p. 2 ¶ 7.

This court does not have subject matter jurisdiction to review the propriety of a state court determination or evaluate constitutional claims which are inextricably intertwined with the state court's decision. "It is well-settled that a federal district court lacks jurisdiction to review, reverse, or invalidate a final state court decision." Dale v. Moore, 121 F.3d 624, 626 (11th Cir. 1997); *citing* District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476, 103 S. Ct. 1303, 1311, 75 L. Ed. 2d 206 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 416, 44 S. Ct. 149, 150, 68 L. Ed. 2d 362 (1923). Furthermore, "[i]f the constitutional claims presented to a United States district court are inextricably intertwined" with the merits of a judgment rendered

in state court, 'then the district court is in essence being called upon to review the state-court decision. This the district court may not do.'" Pennzoil Co. v. Texaco Inc., 481 U.S. 1, 25, 107 S. Ct. 1519, 1533, 95 L. Ed. 2d 1 (1987) (Marshall, J., concurring) *citing* Feldman, 460 U.S. at 483-84 n. 16, 103 S. Ct. at 1316 n. 16); *quoted in* E.B. v. Poritz, 914 F.Supp. 85, 88-89 (D.N.J., 1996).

> Under the Rooker-Feldman doctrine, the authority to review final decisions from the highest court of the state is reserved to the Supreme Court of the United States. *See* Hollins v. Wessel, 819 F.2d 1073, 1074 (11th Cir. 1987)... A district court engages in impermissible appellate review when it entertains a claim that the litigants did not argue in the state court, but is inextricably intertwined with the state court judgment. ... The Rooker-Feldman doctrine applies as long as the party had a reasonable opportunity to raise his federal claims in the state court proceedings.

Dale, 121 F.3d at 626. The question then is whether Plaintiff's "federal claim succeeds only to the extent that the state court wrongly decided the issues before it." Datz v. Kilgore, 51 F.3d 252, 253-54 (11th Cir. 1995).

It is evident that Plaintiff's claims are barred. The relief Plaintiff seeks from this action is to order "the Defendant to invalidate and reverse its dismissal of the appeals of suspension and dismissal from employment at the Department of Management Services. ..." Doc. 2, p. 17[1] This requested remedy is illustrative of the fact that Plaintiff's claims are inextricably intertwined with the prior state court judgment because a judgment by this court in Plaintiff's favor would necessarily portend that the state court wrongly decided Plaintiff's prior action by affirming the decision of PERC. Under the Rooker-Feldman doctrine, Plaintiff cannot seek judicial review of the administrative agency decision in state court and and then turn to federal court for review of the same decision when

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[1] The undersigned has numbered the pages of Plaintiff's complaint in the bottom right-hand corner for easy reference.

she is dissatisfied with the results obtained.

The Eleventh Circuit has held the Rooker-Feldman doctrine applicable when the decision of an administrative agency has been appealed in state court. Narey v. Dean, 32 F.3d 1521 (11th Cir. 1994). "If the decision of a state agency has been upheld by a state court, then the Rooker-Feldman doctrine applies, because a challenge to the agency's decision necessarily involves a challenge to the judgment of the state court." Narey, 32 F.3d at 1525, *citing* Staley v. Ledbetter, 837 F.2d 1016 (11th Cir. 1988) (holding the district court lacked jurisdiction to review a decision of a county agency, where that decision had been upheld by the state court of appeals).

The Rooker-Feldman doctrine is closely related to the *res judicata* doctrine, but is distinct. Narey, 32 F.3d at 1524. It has been called "the 'jurisdictional transmutation of res judicata doctrine.'" 18 Charles A. Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 4469 (1981), *cited in* Narey, 32 F.3d at 1524.

> The Rooker-Feldman doctrine asks: is the federal plaintiff seeking to set aside a state judgment, or does he present some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party? If the former, then the district court lacks jurisdiction; if the latter, then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion.

Narey, 32 F.3d at 1524-25. In this case, Plaintiff cannot seek to have PERC's ruling reversed without simultaneously requesting this court to set aside the state court judgment which affirmed the administrative decision.

It is irrelevant that in this suit, Plaintiff names as Defendant the Public Employees Relations Commission and in her prior claim, Plaintiff named the Department of Management Services.[2] *See*

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[2] This point is relevant, however, in the context of *res judicata*. *Res judicata* only applies when there is "identity of the parties." *See* Sewell v.

doc. 2. In Johnson v. De Grandy, 512 U.S. 997, 114 S. Ct. 2647, 129 L. Ed. 2d 775 (1994), the Supreme Court considered the argument by the State of Florida that the federal government's complaint should be dismissed under the Rooker-Feldman abstention doctrine. The Court explained the doctrine as providing that "a party losing in state court is barred from seeking what in substance would be appellate review of the state judgment in a United States District Court. ..." Johnson, 512 U.S. 997, 1005-06, 114 S.Ct. 2647, 2654; *citing* Feldman, 460 U.S. 462, 482, 103 S. Ct. 1303, 1314-15, and Rooker, 263 U.S. 413, 416, 44 S. Ct. 149, 150. The Court found, however, that the invocation of Rooker-Feldman was not appropriate in this case because, "unlike Rooker or Feldman, the United States was not a party in the state court." Johnson, 512 U.S. at 1006, 114 S.Ct. at 2654. Thus, although the Court's language is apparently broad in stating the "United States was not a *party*," the import of this rationale is narrow, stemming from the fact that the United States was not a *plaintiff* in the prior case.

The Eleventh Circuit, relying on Johnson, has also held the Rooker-Feldman doctrine inapplicable when the plaintiffs were not a party to the prior action. Roe v. State of Ala. By and Through Evans, 43 F.3d 574, 580 (11th Cir. 1995), *citing* Johnson, 114 S. Ct. 2647, 2654. The finding is certainly premised on the theory that "because the plaintiffs [were] not parties to the circuit court action, the plaintiffs had no opportunity to raise their constitutional claims

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Merrill Lynch, Pierce, Fenner & Smith, Inc., 94 F.3d 1514 (11th Cir. 1996). Here we do not face identical parties. As this case cannot be decided on the basis of *res judicata*, the doctrine of full faith and credit cannot be applied. Thus, although the facts in this case are remarkably similar to those in Kremer v. Chemical Const. Corp., 456 U.S. 461, 102 S. Ct. 1883, 72 L. Ed. 2d 262 (1982) (holding that where plaintiff's employment discrimination charge was referred by the EEOC to the New York State Division of Human Rights which rejected the claim as meritless, and the decision was upheld on administrative appeal and affirmed in New York state court, the federal district court was required to give full faith and credit to the state court judgment upholding administrative agency's rejection of employment discrimination claim), that case is inapplicable because *res judicata* does not come into play here.

in the circuit court and their claims, therefore, were not considered by the circuit court." In so ruling, the court cited Wood v. Orange County, 715 F.2d 1543, 1547 (11th Cir. 1983), cert. denied, 467 U.S. 1210, 104 S. Ct. 2398, 81 L. Ed. 2d 355 (1984), noting parenthetically, "[T]he Rooker bar can only apply to issues that the plaintiff had a reasonable opportunity to raise." Roe, 43 F.3d at 580.

Another case which addressed this issue is Johnson v. Odom, 901 F.Supp. 220 (W.D.La. 1995). There, the court applied the Rooker-Feldman doctrine finding both of the requirements existed: (1) "the federal plaintiff has been a party to final judgments in state court judicial proceedings," and (2) "the plaintiff's federal complaint is 'seeking what in substance would be an appellate review of the state judgment(s) in a United States District Court.'" Odom, 901 F.Supp. at 223. For both elements, the court cited to Johnson v. De Grandy. It is noteworthy that the court stated the first requirement as demanding the "plaintiff" to have been a party in the prior case.

Accordingly, Rooker-Feldman should be applicable to those cases where the Defendant was not a named party in the prior action, but the Plaintiff is the same in both instances. The Plaintiff here had an opportunity to raise issues concerning PERC's decision on appeal to the First District Court of Appeal. Furthermore, we do not here face the situation where a Defendant was totally outside the prior proceedings. The Defendant was very much involved in Plaintiff's prior state court proceedings as it was the Defendant's decision that the state court was reviewing.

Furthermore, as in the case at bar, the Odom court also found that, although the plaintiff did "not candidly seek review of the state court proceedings to which he was a party, ... his federal complaint [was] nevertheless inextricably intertwined with those former proceedings. ..." Odom, 901 F.Supp. at 223. The court considered substance over form. So should it be here.

Even though Plaintiff states that the relief sought is to reverse PERC's dismissal of her appeal regarding her suspension and em-

ployment dismissal from DMS, this action in actuality seeks to either overturn decisions of the First District Court of Appeal for the state of Florida, or pretend they never happened. The two state court decisions upheld the findings of PERC that Plaintiff's complaints against DMS should be dismissed. This court cannot review the decisions of state courts. That task is left to the United States Supreme Court. Feldman, 460 U.S. at 482, 103 S. Ct. at 1315. Because the substance of Plaintiff's complaint is to seek reversal of a state court judgment, she may not proceed in this court.

Additionally, although part of Plaintiff's claims concern her allegation that she has been denied her first amendment right to seek redress of her grievance in the PERC proceedings, this claim could and should have been raised before the First District Court of Appeal. In that Plaintiff twice appealed the decisions of PERC to the First District Court of Appeal, it is irreconcilable to argue she has been denied her right to petition government for redress of grievances. "[T]he test for determining a violation of First Amendment rights has never been whether or not the speaker or petitioner was successful in delivering his message. ..." Cate v. Oldham, 707 F.2d 1176, 1186 (11th Cir. 1983) (finding petitioners "were not deprived of their right to petition the government for redress of [a] particular grievance" because they had filed an action against the respondents). The test is whether the opportunity was available. Plaintiff here sought redress; she had the opportunity but was ultimately denied relief.

Finally, it should be pointed out that Plaintiff has apparently filed this complaint on the jurisdictional basis provided this court under Title VII. *See* doc. 2, p. 16, ¶ 1, 2. Title VII, 42 U.S.C. § 2000e, prohibits discrimination by an employer:

> (a) It shall be an unlawful employment practice for an employer—(1) to fail or refuse to hire or to discharge any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

42 U.S.C. § 2000e-2. The Defendant is not Plaintiff's employer. Plaintiff may not proceed against the Defendant under Title VII.

Based on the foregoing, it is, therefore, respectfully RECOMMENDED that: Plaintiff's complaint, doc. 2, be DISMISSED with prejudice for lack of subject matter jurisdiction.

IN CHAMBERS at Tallahassee, Florida, this 17th day of February, 1998.

/s/

WILLIAM C. SHERRILL, JR.
UNITED STATES MAGISTRATE JUDGE

NOTICE TO THE PARTIES

A party may file specific, written objections to the proposed findings and recommendations within 15 days after being served with a copy of the report and recommendation. A party may respond to another party's objections within 10 days after being served with a copy thereof. Failure to file specific objections limits the scope of review of proposed factual findings and recommendations.

ENTERED ON DOCKET 2/17/98 by /s/ SW
Rules 58 & 79(a) FRCP or 32(d)(1) & 55 FRCRP

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

NANCY S. KRIDEL,

CASE NO. 4:98cv17-WS

v.

PUBLIC EMPLOYEES RELATIONS COMM.,

REFERRAL AND ORDER

Referred to Judge William Stafford on March 26, 1998
Motion:
MOTION TO REOPEN THE CASE/RECONSIDERATION
Filed by PLAINTIFF ON 3/26/98 Doc.# 9
2
LC (1 OR 2)

ROBERT A. MOSSING, CLERK
BY _____
Deputy Clerk: SHARON WILLIS

ORDER OF COURT

It is ORDERED this 2nd day of April, 1998, the requested relief is denied.

/s/
WILLIAM STAFFORD
SENIOR UNITED STATES DISTRICT JUDGE

ENTERED ON DOCKET 4-2-98 by /s/ SWillis
Rules 58 & 79(a) FRCP or 32(d)(1) & 55 FRCRP

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U.S. DISTRICT CT.
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TALLAHASSEE, FLA.
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MANDATE

From

DISTRICT COURT OF APPEAL OF FLORIDA
FIRST DISTRICT

To the Honorable Mary Ann Burns, Clerk, Chairman, Public Employees Relations Commission

WHEREAS in that certain cause filed in this Court styled:

NANCY S. KRIDEL

Case No. 96-3509

v.

Your Case No. CS-96-128

DEPARTMENT OF MANAGEMENT SERVICES

The attached opinion was issued on April 21, 1997.

YOU ARE HEREBY COMMANDED that further proceedings, if required, be had in accordance with said opinion, the rules of Court, and the laws of the State of Florida.

WITNESS the Honorable Edward T. Barfield, Chief Judge of the District Court of Appeal of Florida, First District, and the Seal of said Court done at Tallahassee, Florida, on this 2nd day of June, 1997.

SEAL: DISTRICT COURT OF APPEAL
SAT CITO SI RECTE
FIRST DISTRICT
STATE OF FLORIDA

/s/ Jon S. Wheeler
Clerk, District Court of Appeal of Florida,
First District

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

NANCY S. KRIDEL, Appellant

v.

DEPARTMENT OF MANAGEMENT SERVICES, Appellee

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND AND DISPOSITION THEREOF IF FILED

CASE NO. 96-3509

Opinion filed April 21, 1997.

An appeal from an order of the Public Employees Relations Commission.

Nancy S. Kridel, Pro Se, for Appellant.

Cindy Horne, Assistant General Counsel, Department of Management Services; and Joey D. Rix, Public Employees Relations Commission, Tallahassee, for Appellee.

PER CURIAM.

AFFIRMED.

BARFIELD, C.J. KAHN, AND DAVIS, JJ., CONCUR.

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Florida 32399

DATE May 14, 1997

CASE NO. 96-3509

L.T. CASE NO. CS-96-128

Nancy S. Kridel, Appellant v. Dept. of Management Services, Appellee

BY ORDER OF THE COURT:

Motion to file rehearing, filed April 24, 1997, is DENIED.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

/s/
JON S. WHEELER, CLERK

BY: /s/ Faith R. Leynes
Deputy Clerk

SEAL: DISTRICT COURT OF APPEAL
SAT CITO SI RECTE
FIRST DISTRICT
STATE OF FLORIDA

MANDATE
From
DISTRICT COURT OF APPEAL OF FLORIDA
FIRST DISTRICT

To the Honorable Mallory Horne, Chairman, Public Employees Relations Commission

WHEREAS in that certain cause filed in this Court styled:

Nancy S. Kridel

Case No. 96-4568

v.

L.T. Case No. CS-96-254

Department of Management Services

The attached opinion was issued on April 30, 1997.

YOU ARE HEREBY COMMANDED that further proceedings, if required, be had in accordance with said opinion, the rules of Court, and the laws of the State of Florida.

WITNESS the Honorable Edward T. Barfield, Chief Judge of the District Court of Appeal of Florida, First District, and the Seal of said Court done at Tallahassee, Florida, on this 12th day of June, 1997.

SEAL: DISTRICT COURT OF APPEAL
SAT CITO SI RECTE
FIRST DISTRICT
STATE OF FLORIDA

/s/
JON S. WHEELER, Clerk
District Court of Appeal of Florida, First District

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

NANCY S. KRIDEL, Appellant	NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND
v.	
DEPARTMENT OF MANAGEMENT SERVICES, Appellee	AND DISPOSITION THEREOF IF FILED
	CASE NO. 96-4568

Opinion filed April 30, 1997.

An appeal from an order of the Public Employees Relations Commission.

Nancy S. Kridel, Pro Se, for Appellant.

Cindy Horne, Assistant General Counsel, Department of Management Services; and Joey D. Rix, Public Employees Relations Commission, Tallahassee, for Appellee.

PER CURIAM.

AFFIRMED.

BARFIELD, C.J. KAHN, AND DAVIS, JJ., CONCUR.

DISTRICT COURT OF APPEAL, FIRST DISTRICT
Tallahassee, Fl. 32399

DATE May 27, 1997

CASE NO. 96-4568

L.T. CASE NO. CS-96-254

Nancy S. Kridel, Appellant v. Department of Management Services,

Appellee

BY ORDER OF THE COURT:

Motion for rehearing, filed May 2, 1997, is DENIED.

I HEREBY CERTIFY that the foregoing is (a true copy of) the original court order.

/s/
JON S. WHEELER, CLERK

BY: /s/ Faith R. Leynes
Deputy Clerk

SEAL: DISTRICT COURT OF APPEAL
SAT CITO SI RECTE
FIRST DISTRICT
STATE OF FLORIDA